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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,170	01/24/2005	Karl Skjonnemand	MERCK-2965	3628

23599 7590 03/09/2007

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EXAMINER	
CHUNG, DAVID Y	
ART UNIT	**PAPER NUMBER**
2871	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/522,170	SKJONNEMAND ET AL.	
	Examiner	Art Unit	
	David Y. Chung	2871	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-22* is/are pending in the application.

4a) Of the above claim(s) *6,7 and 12-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,5 and 8-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Invention I in the reply filed on December 8, 2006 is acknowledged. The traversal is on the ground(s) that a serious burden does not exist. This is not found persuasive because different design and mode of operation as noted in the election of species requirement.

The requirement is still deemed proper and is therefore made FINAL.

Claims 6, 7 and 12-22 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 8, 2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 4, 5 and 8-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Hanelt et al. (U.S. 5,827,449).

As to claim 1, Hanelt discloses a film comprising liquid crystalline material having a cholesteric phase with a pitch preferably between 100nm and 400 nm. See column 2, lines 39-49 and column 9, lines 10-40. Hanelt discloses that the axis of the helix can be parallel or perpendicular to the film surface. See column 9, lines 33-35. Hanelt teaches that the cholesteric liquid crystal layer of this type has negative birefringence. See column 1, lines 32-35.

Hanelt does not disclose that the helical pitch is 55 nm to less than 100 nm but discloses an overlapping range of 100 nm to 400 nm. It would have been obvious to one of ordinary skill in the art at the time of invention to make the helical pitch 55 nm to less than 100 nm, since it has been judicially determined that a prima facie case of obviousness exists in cases where the claimed ranges overlap or lie inside ranges disclosed by the prior art. See *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

As to claim 4, Hanelt discloses that the cholesteric liquid crystal platelets comprise liquid crystal material that is preferably cross-linked. See column 10, lines 9-29.

As to claims 5, Hanelt discloses that the mean alignment of the mesogens in the vicinity of the film surface can be parallel or perpendicular to the film surface or inclined at an angle between 0 and 90 degrees to the film surface. See column 9, lines 32-39.

Hanelt teaches that the disclosed film can be used as a compensator by placing it between an LCD cell and polarizer. See column 12, lines 5-15.

As to claims 8-10, Hanelt teaches that the disclosed film can be used as a compensator by placing it between an LCD cell and polarizer. See column 12, lines 5-15.

As to claim 11, Hanelt teaches that the disclosed films are particularly suitable for improving view-angle dependence of twisted nematic (TN) liquid crystal displays.

Response to Arguments

Applicant's arguments filed August 25, 2006 have been fully considered but they are not persuasive as discussed in MPEP § 2144.05. See *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). The prior art taught carbon monoxide concentrations of "about 1-5%" while the claim was limited to "more than 5%." The court held that "about 1-5%" allowed for concentrations slightly above 5% thus the ranges overlapped. See also In re Geisler, 116 F.3d 1465, 1469-71, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997) (Claim reciting thickness of a protective layer as falling within a range of "50 to 100 Angstroms" considered prima facie obvious in view of prior art reference teaching that "for suitable protection, the thickness of the protective layer should be not less than about 10 nm [i.e., 100 Angstroms]." The court stated that "by stating that suitable protection' is provided if the protective layer is about' 100 Angstroms thick, [the prior art reference] directly teaches the use of a thickness within

[applicant's] claimed range."). Similarly, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. Furthermore, Hanelt recites a pitch of less than 400 nm in claims 5-7, which encompass the range claimed by the applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Chung whose telephone number is (571) 272-2288. The examiner can normally be reached Monday-Friday 9:30 am to 6:00 pm.

David Nelms
Supervisory Patent Examiner
Technology Center 2800

David Chung
GAU 2871
03/04/07